UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BARON WOLMAN, Plaintiff, - against - MENTAL FLOSS, INC., Defendant.	Docket No. 17-cv-03385 JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Baron Wolman ("Wolman" or "Plaintiff"), by and through his undersigned counsel, as and for his Complaint against Defendant Mental Floss, Inc. ("Mental Floss" or "Defendant") hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant's unauthorized reproduction and public display of a copyrighted photograph of Grateful Dead frontman Jerry Garcia, owned and registered by Wolman, a New Mexico-based photojournalist. Accordingly, Wolman seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq*.

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq*. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or is doing business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Wolman is a professional photojournalist in the business of licensing his photographs to online, print, and television media outlets for a fee, having a usual place of business at 52 Vereda Serena Road, Santa Fe, New Mexico 87508. Wolman's photographs have appeared in many publications around the United States.

6. Upon information and belief, Mental Floss is a corporation duly organized and existing under the laws of the State of New York, with a place of business at 55 West 39th Street, New York, New York 10018. Upon information and belief, Mental Floss is registered with the New York Department of State, Division of Corporations to do business in the State of New York. At all times material hereto, Mental Floss has owned and operated a website at the URL www.mentalfloss.com (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. On January 1, 1992, Wolman photographed Grateful Dead frontman Jerry Garcia holding up his hand (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Wolman is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with the U.S. Copyright Office and was given Copyright Registration Number VA 1-726-336.

B. Defendant's Infringing Activities

10. Upon information and belief, on or about February 1, 2008, Mental Floss ran an article on the Website entitled *5 Famous Missing Fingers*. See http://mentalfloss.com/article/17950/5-famous-missing-fingers. The article prominently featured the Photograph. A true and correct copy of the article is attached hereto as Exhibit B.

11. Mental Floss did not license the Photograph from Plaintiff for its article, nor did Mental Floss have Plaintiff's permission or consent to publish the Photograph on its Website.

12. Wolman discovered Defendant's infringement on or about April 6, 2017.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST MENTAL FLOSS)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. Mental Floss infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Mental Floss is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photograph.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the aforementioned acts of infringement by Mental Floss have been willful, intentional, and purposeful, in disregard of and with indifference to Plaintiff's rights.

17. As a result of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to recover his damages and Defendant's profits pursuant to 17 U.S.C. § 504(b).

18. Defendant's conduct, described above, is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Mental Floss be adjudged to have infringed upon Plaintiff's copyright in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded his actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: May 7, 2017
Valley Stream, New York

LIEBOWITZ LAW FIRM, PLLC

By:/s/ Kamanta C. Kettle

Kamanta C. Kettle
11 Sunrise Plaza, Suite 305
Valley Stream, New York 11580
Telephone: (516) 233-1660
KK@LiebowitzLawFirm.com

Attorneys for Plaintiff Baron Wolman